IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LAR NO. 4 OF 1994

WITH

LAR NO. 7 OF 1994

WITH

LAR NO. 2 OF 1998

WITH

LAR NO. 3 OF 1998

AND

LAR NO. 4 OF 1998

LAR NO. 4 OF 1994

The Special Land Acquisition
Officers. .. Petitioner.

vs.

Smt. Anibai Janardhan Patil
and others .. Respondents.

Mr. M.D. Naik, Asst. Government Pleader
for S.L.A.O.
Mr. C.M. Korde, Sr. Counsel with
D.V. Merchant and Milind Jadhav
i/by Pravin Mehta and
Mithi & Co. for Claimants.
Mr. G.S. Hegde with C.M.Lokesh for the
Acquiring Body.

WITH

LAR NO. 7 OF 1994

The Special Land Acquisition
Officers. .. Petitioner.

vs.

Jaganath Anandrao Patil
and others .. Respondents.

Mr. M.D. Naik, Asst. Government Pleader
for S.L.A.O.
Mr. C.M. Korde, Sr. Counsel with
D.V. Merchant and Milind Jadhav
i/by Pravin Mehta and
Mithi & Co. for Claimants.
Mr. G.S. Hegde with C.M.Lokesh for the
Acquiring Body.

WITH
LAR NO. 2 OF 1998

The Special Land Acquisition
Officers. .. Petitioner.

vs.

Hirabai V. Raut
and others .. Respondents.

Mr. M.D. Naik, Asst. Government Pleader
for S.L.A.O.
Mr. C.M. Korde, Sr. Counsel with
D.V. Merchant and Milind Jadhav

i/by Pravin Mehta and

Mithi & Co. for Claimants.

Mr. G.S. Hegde with C.M.Lokesh for the

Acquiring Body.

WITH

LAR NO. 3 OF 1998

The Special Land Acquisition

Officers. .. Petitioner.

vs.

Nagubai G. Patil

and others .. Respondents.

Mr. M.D. Naik, Asst. Government Pleader

for S.L.A.O.

Mr. C.M. Korde, Sr. Counsel with

D.V. Merchant and Milind Jadhav

i/by Pravin Mehta and

Mithi & Co. for Claimants.

Mr. G.S. Hegde with C.M.Lokesh for the

Acquiring Body.

WITH

LAR NO. 4 OF 1998

The Special Land Acquisition

Officers. .. Petitioner.

vs.

Shri Bhalchandra Gagu Patil
and others .. Respondents.

Mr. M.D. Naik, Asst. Government Pleader
for S.L.A.O.
Mr. C.M. Korde, Sr. Counsel with
D.V. Merchant and Milind Jadhav
i/by Pravin Mehta and
Mithi & Co. for Claimants.
Mr. G.S. Hegde with C.M.Lokesh for the
Acquiring Body.

CORAM : S.U. KAMDAR, J.
DATE: 7TH FEBRUARY,2005.

ORAL JUDGMENT :

1. This group of land acquisition references arises out of a common notification and for common public purpose and, therefore, the same is disposed of by this common judgment.

2. By notification issued on 28.7.1989 being notification no. LAQ/DESK/I/B-1/3658/CR-21 by the Commissioner of Konkan Division, the lands were notified for acquisition for the public purpose of Bus depot, Bus Station, staff quarters and other allied works for the Maharashtra State Road

Transport Corporation. The said notification was issued under section 6 of the Land Acquisition Act, 1894 read with Section 126 (4) of the Maharashtra Regional and Town Planning Act, 1966. The said notification was published in the Government Gazette on 3.8.1989

3. In the course of acquisition proceedings the claimants were heard by the Special Land Acquisition Officer and ultimately the Special Acquisition Officer by his award dated 25.9.1990 inter alia awarded compensation in favour of the claimants at the rate of Rs. 375 in case where the land has access and the sum of Rs. 125 in case where the land did not have an access road. The SLAO has held as under :-

> "Considering the existing situation, I estimate the land value of the land under acquisition, as on the date of notification @ Rs. 375/- per sq. mtr. for the land to which Road is available and @ Rs. 125/- per sq. mtr. for the land to which approach road is not available."

4. During the pendency of the said award, the State Government applied an urgency clause and under section 17 of the Land Acquisition Act possession of the land was taken on 30.6.1990 for the purpose of

construction of bus depot and other allied services.

5. The said acquisition proceedings were conducted in respect of five owners in respect of various plots the details of which are set out hereinunder :-

Name of the Owner	AREA CTS No. S.No.226	Plot No.	Area Qcquired S.Q.Mtrs.	Rate Awarded (Rs.)
Janardhan Laxman Patil	2352 Pt.	1	330.14	375.00
Harishchandra Laxman Patil	2349 Pt.	5	1370.40	125.00
Jaganath Anandrao Patil.	2350 Pt. 2350 pt.	3 4	740.64 025.48	375.00
Mirabai Vasudev Raut Mahadev Vasudev Raut Kashinath Vasudev Raut Mukund Vasudev Raut Moreshwar Vasudev	2348	6	675.70	375.00

Raut				
Nagubai G.Patil	2347 pt	7	2249.90	375.00
Ramabai Waman Patil				
Jayantibai N. Patil				
Jayantibai N. Patil				
Yamunbai N. Patil				
Pandurang Balkrishna Patil				
Balchandra Jagu Patil	2353	2	878.70	375.00
Venubhaui Kashinath Patil	2300 pt.	8	1765.50	125.00
Namdeo Kashinath Patil				
Motiram Kashinath Patil.				
Naresh Kashinath Patil				
Indubai Kashinath Patil				
Inayak Kashinath Patil				
Prakash Kashinath				

6. Each of the aforesaid owners have filed a separate land acquisition references under Section 18 of the Land Acquisition Act for enhancement. The said references have been forwarded by the Collector for determination by this Court. The said Land Acquisition Reference Nos. are 4/94, 7/94, 2/98, 3/98 and 4/98. Each of the said land acquisition references arise out of the said acquisition are clubbed together and are disposed of by me by this common judgment.

7. By L.A.R. no. 4 of 1994, the claimants have prayed for enhanced compensation of Rs. 1,74,66,470/- The present LARs were heard from time to time and evidence is recorded in respect thereof. The total area of the land in respect of which the acquisition has taken place clubbed together is 936.46 sq. mtrs. The claimants have in their examination-in-chief examined only one witness namely one Shri Hitendra Kisan Mehta, Architect and Valuer and he has given common evidence in respect of all the aforesaid land acquisition references. He has produced valuation report dated 23.8.2004 along with site plan and has relied upon three instances for the purpose of enhancement of the compensation. The

Acquiring Body, has, on the other hand, examined one Shri Ashok Gopinath Deshmukh, being the officer of the Acquiring Body, one Prashant Vinayakrao Potdar, another officer of the Acquiring Body. Then one Shri Deepak Sadashiv Dighade. The Acquiring Body has also examined one Shri Ramesh Rayate an Architect and Valuer on behalf of MSRTC and has produced his valuation report dated 3.8.2004. The Acquiring Body has also examined one Mukund Bhagwan Yeragi on behalf of the Acquiring Body as a formal witness. Thus, in all the Acquiring Body has produced the evidence of five witnesses in support of their case. In all various documents are produced before me. The claimants have produced around 14 documents in support of their case whereas the respondents have produced three documents in support of their case. I shall deal with the said documents and the oral evidence while analysing the evidence.

8. In all four sale instances are produced in the course of the evidence. Three of them are produced by witness Mehta of the claimants whereas one of the sale instance is established in the cross-examination of Mr. Rayate, the witness of the respondents herein. The analysis of the evidence and the documents produced briefly are as under:-

9. Mr. Mehta who was examined by the claimants has deposed that he is a practising Architect since 1985 and runs the firm known as H. Mehta & Associates. In his examination he has produced various documents such as copy of the award dated 25.9.1991 declared by the SLAO(2), Mumbai Suburban District. He has also produced certified copy of the valuation report and certified copy of the letter dated 29.5.1999 addressed by Divisional Collector, M.S.R.T.C. inter alia stating that valuation for surplus vacant land declared under the U.L.C. Act. is Rs. 4,900/- per sq. mt. and Rs. 5,000/- per sq. mt. The said surplus vacant land which was in possession of the governemnt is also forming part of the present acquisition proceedings for the acquiring body. He has also produced copy of the agreement for sale dated 17.2.1990 and the certified copy of the agreement for sale dated 10.6.1998 and the certified copy of the deed of conveyance dated 4.7.1988. These three documents are produced as instances which have been relied upon by him in his valuation report dated 23.8.2004.

10. In so far as the sale instance no. 1 is concerned, it pertains to the sale of a flat by one Mrs. M.K. Developers to Mrs. Vijyalaxmi

Ajay Shenvi. The document mentions the date as 17.2.1990 and is registered on 4.1.1991. The rate prescribed therein is in respect of the flat i.e. land along with building. The area of the flat is 381 sq. fit and the price is Rs. 1,75,000/-. The property is situated at S.V. Road, Dahisar in residential area. In so far as sale instance no. 2 is concerned, the same is again in respect of a flat and the vendor is Messrs. Sameer Builders and Mr. Satish Gopal Sawant and the document is executed on 10.6.1992. The same also pertains to the sale of flat of an area admeasuring about 380 sq. ft. and the total price provided for was Rs. 3,06,000/-. The property is once again situated at S.V. Road, Dahisar, (East). In so far as these two sale instances are concerned, both the claimants and the respondents have unanimously agreed that both these instances are required to be discarded outright. It is because the same does not pertain to the sale of the land. What I am required to consider while assessing the enhancement of the compensation in favour of the claimants or otherwise, is to determine the market value of the land which is sought to be acquired. The fact that the aforesaid two instances pertain to the sale of flat, they cannot be a yard-stick for determination of the market value of a plot of land and, therefore,

the said sale instances cannot be taken into consideration. On this aspect since there is consensus between both the parties, I discard the same without further discussion in that behalf.

11. Thus, it left only one instance in so far as the claimants are concerned i.e. sale instance no. 3. This sale instance no. 3 pertains to the sale of land. This sale instance no. 3 has been proved before me by the claimants. The claimants have produced the registered deed of conveyance in respect of the said sale instance no. 3. This pertains to a plot of land admeasuring about 2,750 sq. mtrs. It is situated at Dahisar (East). It is at the distance of 4.5 kilo meters from Borivali Railway Station and away from the land under acquisition. The date of conveyance is 4.7.1988. The date of registration of the conveyance is 13.6.1994. The vendor in respect of the said conveyance is one Mrs. Urmilla Vasantlal Parmar and the purchaser of the said land is one M/s. Shraddha Associates. The total consideration prescribed in respect of the said land is sum of Rs. 3 lacs and rate per sq. mtr. works out at Rs. 445.78 per sq. mtr. On the other hand in so far as the sale instances are concerned, the respondent has not produced any sale instance but has relied upon the very same sale instance that the Special

Land Acquisition Officer has accepted in the award. However, even the said sale instance has not been proved by the respondents in their examination of the various witnesses as neither the registered deed or even Index II in that respect was produced. Be that as it may, the said instance is now on record as the claimants themselves produced the deed of conveyance and cross-examined the witnesses of the respondent herein one Mr. Rayate. Thus, the said sale instance also forms the part of the record. The said sale instance is referred hereinafter as sale instance no. 6. This sale instance no. 6 pertains to a plot of land just adjacent to the land under acquisition. This instance pertains to a plot of land bearing CTS No. 2351, S. No. 224,Hissa No. 1, area admeasuring 2023.36 sq. mtrs. The rate is of a sum of Rs. 351.43. The said land is touching the land under acquisition and the document is registered in 1987. The vendor of the said land is one Ratilal Gokuldas Thakkar & others and the purchaser is one co-operative society known as Borivali Sai Smriti Co-operative Housing Society. Thus, in effect, I am now required to consider out of the said two sale instances namely, sale instance no. 3 and sale instance no. 6 which has been produced by the claimants through the cross-examination of the respondent’s witness.

12. Further analysing the evidence of Mr. Mehta, I find that Mr. Mehta's evidence is reliable and the same is fairly consistent. In so far as sale instance no. 3 is concerned, in the course of the cross-examination Mr. Mehta has explained in detail why he has preferred the said sale instance. He has been thoroughly grilled in respect of the said sale instance no. 3 particularly in respect of the distance and in respect of the surrounding area of the said property. In the cross-examination said Mr. Mehta has answered each and every question and explained why the said instance no. 3 should be preferred and should be treated as the most comparable land. In so far as the amenities are concerned, he has explained the same in paragraph 21. He has admitted in the said paragraph that the said plot of land is situated near the railway station. However, he has explained that the area of Dahisar where the said land is located is less developed than the area of Borivali where the acquired plot of land is located. In so far as why he chose only the sale instance no. 3 which is the only sale instance of plot of land, he has explained that in paragraph 22 that he could only gather from the Office of the Sub Registrar of Assurances only one example on record in respect of vacant plots

of land closer to the relevant date of 3.8.1989 which is the date of publication of notification in the present acquisition. He has deposed that other instances which were recorded in the Office of the Sub Registrar ere of flat and not of the transactions of plot of land. He has also explained in paragraph 23 that the distance between the acquired plot of land and the said sale instance no. 3 is around 2.5 kilometres from the land under acquisition. He has also admitted that the sale instance was of a developed land but clarified that the same did not have building permission at the time of execution of the conveyance. He has also admitted that there is substantial difference in price of non-developed land and developed land as well as he has further deposed that the price difference between the agricultural land and non-agricultural land is very small because normally the permission is granted for non-agricultural use of the land as a matter of routine. In his further cross-examination he has deposed that the land in the instance no. 3 is located half kilo meter from Dahisar Railway Station. However, he denied that merely because the proximity of Dahisar Railway Station the land should be treated as incomparable because the land acquired is situated in undeveloped area. He admitted that the railway station is one of

the amenities taken into consideration for comparison of price. However, in his view, the land under acquisition would fetch better market value because it was closer to Borivali Railway Station then located near Dahisar Railway Station. According to him, it is because the Borivali Railway Station is a big junction and much more developed locality and well connected to the railway station than Dahisar railway station. He has however stated that the was not aware as to whether there was a bus terminus near Dahisar Railway Station in 1988. However, he has deposed that there were some shops and establishments near the surrounding area of the sale instance no.3. He has further explained that in respect of certain aspects he has provided certain allowances in his valuation report which he has filed. One of such allowances given is in respect of the development of the surrounding land in question in sale instance no. 3. In the further cross-examination he has deposed that the rise in the land price in Dahisar was much less than the rise in the land price in Borivali. He has further deposed that the said sale instance no. 3 is most comparable instance in respect of the said land and the same should be accepted.

13. As against this, the Acquiring Body has

led the evidence of one Mr. Ashok Gopinath Deshmukh, Asst. Traffic Superintendent. He has only deposed to the facts. In the evidence he has deposed that in 1990, the D.P. road which is provided in the development plan on the West of the acquired land was not a motorable road as it was not asphalted and they were required to keep their jeep near Nancy colony and walk upto the acquired plot of land. Save and except the description of the property as on the date of taking possession thereof on 30.6.1990, the said witness has deposed nothing else. He is being examined on the basis that he was one of the signatories to the possession receipt of MSRTC. In cross-examination, he has deposed that he was only assigned the job to take possession of the said land and accordingly he was present and executed the said receipt. In the course of cross-examination, the explanation is given to the terminology of "low lying area" by explaining that there were certain ditches on the land which were not developed and that the land which was not motorable. He has admitted that he has given that description on the basis of his recollection of what he saw in 1990. However, in cross-examination he has deposed that in 1990 he has never travelled on the 18.3 mtr D.P. road from Nancy colony but stop upto the intersection. However, he stated that he is still in a position

to describe the said road since he had seen that stretch of the road and he used to travel in the MSRTC vehicles upto the Nancy Colony and thereafter he used to proceed on foot for the purpose of inspecting the acquired land. He has denied the suggestion that the D.P. Road was asphalted as far back as in August 1989 but he admitted that he is not aware of what the condition of the portion of the 18.3 met. D.P. road between the acquired property and the Shiv Vallabh road intersection.

14. Thereafter the evidence has been led by the Acquiring Body of Prashant Vinayakrao Potdar. His evidence also is based on the possession receipt executed by him and he has also deposed about the condition of the land in 1989 while he deposed that the road to the West and South of the acquired land of 18.30 mts. D.P road and 13.40 mtrs. D.P. road respectively was Kachha road. He has also deposed that the D.P. Road on the West of the said plot was not motorable road as it was not asphalted and they were required to park their jeep near Nancy Colony and walk upto the acquired plots. The evidence of this witness is somewhat similar to the evidence of other witness Mr. Deshmukh. In his cross-examination, he has deposed that the estimate given by him pertaining to water stagnation was based on his

visual observation and not on the basis of any measurement. He has also deposed that as on 30.6.1990, there was no road in existence between the nancy colony bus stop and the Shiv Vallabh Road intersection shown in the plan Annexure - B to the valuation report, Exhibit C- 6. According to him, this road was not motorable and, therefore, it was difficult to walk to the remaining part of the road near the intersection.

15. Thereafter evidence is led of one Mr. Deepak Sadashiv Dighade. This gentleman has deposed about the work of filling up which was required to be done by MSRTC in January, 1994. He is not aware of any of the fact prior thereto since he joined service of MSRTC in January, 1994. He has deposed that the entire acquired land was low lying except a small portion which was levelled in the year 1993-94. He further deposed that the tenders ere also called for hardening the land for making the same useful for the purpose of bus depot. He has deposed that M/s. Rakesh Enterprises was granted the contract for an amount of Rs.2,62,173.26 ps. for levelling and hardening of the said portion of acquired land. He has further deposed that they had again in 1995-96 invited tenders for levelling an area admeasuring 10409.22 sq. mts. and the work was allotted to one M/s. Gajanan

Constructions and the work was completed on 28.2.1997. The cost of levelling and hardening the land has come to around Rs. 9,42,238/-, according to the said witness. He has filed with his evidence the documents pertaining to the work carried out and also the various details pertaining to the details of payments thereof.

16. The said witness was cross-examined by the claimants and in the cross-examination he has deposed about the depth at which the said land was required to be levelled. He has deposed in his evidence that in the plan which is shown as Exhibit R-1 he has given the details of formation level and the ground level. The difference in the formation level is between 30.45 and the existing ground level of 30.540 i.e. around .090. Thus the level was required to be filled in upto .090 mtrs. In the further cross-examination, he has deposed about the description mentioned in the various documents about filling up work required to be carried out by MSRTC for the parking area for S.T. bus depot. However, he has denied the suggestion that the said filling up is not required if the land is required for the construction of a building and not for ST Depot. He has further admitted in his evidence that after the completion of the work by the contractor, the

level of the land was higher than the existing road which is shown on the West side of the property in plan Exhibit R-1. According to his admission, the level of the ground of the filing up of the property was 2 to 3 inches higher than the existing road.

17. Thereafter the respondent has examined one Mr. Ramesh Rayate who is an Architect - Valuer. In his examination-in-chief he has stated that he is a practising architect and at the request of the Divisional Controller, MSRTC he has visited the suit land and prepared his valuation report dated 21.10.2004. He has determined the true and correct market value of the land which is the land under acquisition and he filed his valuation report. In so far as his evidence is concerned, I am constrained to make severe adverse observations. His answers to the cross-examinaton have been evasive and not to the point. In my opinion, his evidence has not been able to withstand the test of cross-examination. Some of the instances on the basis of which I am constrained to make this observation are as under :-

a) Firstly, whenever he has been questioned about his valuation report, he has merely stated that he has prepared the report on the basis of

the information given by the SLAO and the documents furnished to him by the MSRTC. There is no independent valuation of the said plot of land at all.

b) Apart therefrom, some of the answers to the questions have been unintelligible. Such as, when he was questioned on what basis he has stated in paragraph 3 in his valuation report that the land incurred heavy expenditure in levelling this plot he has answered that he has given the same on the basis of information supplied by the MSRTC. On a question on what basis he has stated that there has been no excess road to the said land he has stated that he has based his finding on the basis of paragraph 13 of the award. Even in respect of a query that on what basis he has mentioned in his valuation report that in 1989 the land was low laying land, he has stated that his statement in para 2 of the valuation report that the land was surrounded by number of hutments in 1989 is based on the statements made by SLAO in his award. In so far as the filing up is concerned, he has made an over the board statement that filling up was required to be done of about 6-7 ft. According to him the said land was low lying land. He has stated that he has made that statement on the basis of 80 ft. wide portion of the land on the

rear portion of the property which is lying undeveloped. It is quiet ununderstandable that on the basis of the said portion of the land he can make a sweeping statement about the condition of entire plot of land. His evidence in this respect have been very unsatisfactory. It is because the earlier witness Mr. Dighade who has prepared the plan Exh. R-1 has stated in his evidence about the formation level and ground level which was required to be filled in. To say the least the evidence of Mr. Rayate does not inspire the confidence of the Court.

c) Apart therefrom, he has not produced any sale instance on the basis of which he has valued the said land. Though he relied upon sale instance no. 6, but he did not produce the documents to prove the said sale instance.

d) In the course of his cross-examination he has even deposed that for the purpose of the valuation of the acquired land the designated user as Bus Depot thereat under the MRTP Act, 1966 should be taken into consideration. He has further deposed that the fact that the provisions of the ULC Act apply to a particular land or not is irrelevant and unimportant fact for the purpose of Valuation Report of the said land. He was cross-examined at length. When he was

questioned on the information he has with regard to sale instance no. 6, he answered that he does have Index II but did not produce the same to prove the said sale instance. He admitted in his cross-examination that the construction of the building on the said plot of land in sale instance no. 6 was completed by 1988. He further deposed that he has never visited the suit land in 1989. Surprisingly, still in his cross-examination he has deposed as under :-

> "I do not agree that it is physically impossible to determine the level of the acquired land in 1989 by looking to the portion to the east of the said land in 2004.

In my opinion, his examination is devoid of any merit as it is based on total conjectures and based on so called material supplied by MSRTC and averments made in the award. He has further admitted that he has computed the compensation of the land on the basis that the entire acquisition of 5 different owners is a one piece of land. In view of such deficiencies in his evidence, it is not possible for me to accept his evidence and take the same into consideration.

18. This leads me to the next witness which

has been examined by the respondent one Mukund Bhagwan Yeragi. The said witness was examined by the acquiring body in respect of the correspondence entered into by and between MSRTC and the Collector in respect of the portion of acquired land which was under acquisition the said land was already vested in the government by virtue of being declared as surplus under ULC Act and that the land was in possession of the Collector. The said land was sought to be purchased by the acquiring body for the very same public purpose of bus depot. It was contended that the government itself has demanded the rate of Rs. 4900/- per sq. mtr. and Rs. 5800/- per sq. mtr. in respect of the said land and that should be therefore taken as a reasonable market value of the said land. The said witness was produced to indicate that the said transaction is not yet concluded by and between the MSRTC and the State Government and correspondence in respect thereof has been tendered by the said witness in his examination-in-chief. In so far as this witness is concerned, I am not inclined to give much significance or importance to him. It is an admitted position that in so far as the land under ULC is concerned, which is sought to be acquired by the acquiring body simultaneously with the other land under acquisition, the price has not been finalised by and between Collector

and acquiring body and, therefore, to take the same price into consideration which is still at the negotiation stage is not appropriate for the purpose of enhancing the market value of the said balance of the land. I am required to take into consideration only concluded sale instances and not those which are still at negotiation stage.

19. While analysing the documentary evidence which is produced before me, I find that the claimants have produced around 14 documents. Exhibit C-1 is a letter dated 1.3.1999 addressed by the Town Planning and Valuation Department to the Additional Collector and Competent Authority. This pertains to a portion of the land which is under acquisition but not belonging to the claimants herein. The same is the surplus land vested in the Collector. In the said letter around Rs. 4900/- to 5800/- is the rate quoted by the Valuation Department of the State Government. Exhibit C-2 is a letter dated 29/5/99 addressed by the Additional Collector to the acquiring body MSRTC. Relying upon the aforesaid valuation report demanding the rate of about 4900/- to 5800/- per sq. mt. of the land. To this correspondence I do not give much credence. Simply because the same does not reflect the true market value of the land. It is only a valuation. Furthermore, the said

correspondence has not concluded in any final contract by and between the MSRTC and the government so as to accept as the market value. These are the prices which are subject to negotiation and finalisation. In view of the fact that the said prices are not final, I do not think it is proper that this document should be accepted as the evidence of the market value in respect of the aforesaid land under acquisition. Exhibit C-3 is the certified copy of the agreement dated 17.2.1990 in respect of sale of a flat being no. 2 building B situated in CTS No. 950, 950/1 to 22 at S.V. Road, Dahisar (East). This agreement pertains to the sale of flat. As indicated above, this sale instance has to be rejected as agreed by and between both the parties. Exhibit C-4 is the certified copy of the agreement dated 10.6.1992. This agreement is in respect of another flat as sale instance no. 2 which also is required to be rejected in view of the agreement of both the parties.

20. This leads me to the third sale instance which is a document on which reliance is placed. It is a deed of conveyance dated 4.7.1988. It is Exhibit C-5. The land in this sale instance is CTS No. 1121 (part) survey no. 30, Hissa NO. 2 admeasuring 207 sq. mtrs. The deed of conveyance for the said land is executed by and between Mrs. Urmila Vasantlal Parmar and

Yasumati Ramniklal Parmar as vendors and M/s. Shraddha Associates, a partnership firm as purchasers of the said plot of land. The said sale deed indicates that the plot of land of 207 sq. mtrs. was sold for the total sum of consideration of Rs. 3 lacs indicating the market value of the said plot of land at Rs. 1445.78 per sq. mtr. i.e. total consideration of Rs. 3 lacs divided by the area of the plot 207.50 sq. mtrs. The map indicating the measurement and the shape of the plot is annexed to the said Exhibit C-5 which indicates that the plot is not well shaped square plot.

21. Exhibit C-6 is the valuation report of the Architect and Valuer Mr. Mehta. I have already dealt with it in detail the said valuation report. Exhibits C-7 to C-12 are the possession receipts all dated 13.6.1993 in respect of this fact there is no dispute about the possession taken and therefore, the question of commenting upon the same does not arise. Exhibit C-13 is a conveyance dated 18.7.1985. Now this conveyance is in respect of sale instance no. 6. This conveyance has been executed by and between Ratilal Gokuldas Thakkar as the vendor of the first Part, Dina Ajaykumar Mehta, Smt. Vanlila P. Shah, Kusum Champak

Mehta, Rejendra A. Jhaveri and Falgani P. Shah as confirming parties and ultimate purchasers being Borivali Saismruti Co.operative Housing Society Ltd., Though the said conveyance is executed on 18.7.1985, in fact the first agreement for sale was entered into on 6.10.1978. The said agreement indicates that on 6.10.1978 for the said land the price was fixed at Rs. 1,15,000/- and the area of the said land is about 2023.36 sq. mtrs. It further indicates that there was a further supplemental development agreement dated 20.2.1981 and ultimately it is indicated that the said conveyance which has been executed for a sum of Rs. 1,06,586.82 paise is a composite agreement in respect of the said plot of land as well as the building constructed thereon. The said conveyance is in respect of the land adjacent to the land under acquisition. The map of the said land is also indicated as annexure to the conveyance. This also indicates that the said plot of land was also not in a proper shape. Thereafter Exhibit C-14 has been exhibited once again. It is a letter dated 30.9.2002 addressed by the MSRTC to the Urban Development Department. Once again this pertains to the negotiations pertaining to the acquisition of the surplus land.

22. As against the aforesaid evidence which

has been produced by the claimants, the respondent acquiring body has produced Exhibit R1 to R3. Exhibit R1 pertains to compilation of documents containing in all pages 1 to 118. This compilation is in respect of the tender notice and tender work for filling up of the said land under acquisition which was carried out by the MSRTC. Exhibit R2 pertains to the valuation report which has been produced by Ramesh Rayate on behalf of the acquiring body. This valuation report has also been dealt with by me earlier hereinabove. Exhibit R3 is a letter dated 5.10.2002, once again a letter in respect of the negotiations pertaining to portion of the land which was subject to the ULC and was sought to be acquired in negotiations with the department. A press note dated 11.7.1978 was produced by the claimants which was issued under the provisions of the ULC Act. It is marked "X" for identification as the same is not proved on record. These are the documentary evidence produced by the parties before me. In light of the aforesaid documentary evidence and oral evidence, I am now required to decide what should be the price and the market value of the land. The claimants on the one hand are seeking that the instance no. 3 should be the yard-stick for the purpose of determination of the market value of the land under acquisition. On the other

hand, the respondent, acquiring body, has contended that it is the instance no. 6 which is a more comparable and the same should be taken as yard-stick as market value for the land under acquisition.

23. Before I go into these rival contentions of the parties pertaining to the selection of one of the land reflected by aforesaid sale instances for the purpose of ascertaining the market value of the land, I must revisit the law developed by the Apex Court in respect of the exercise to be undertaken for the purpose of determination of comparable land for ascertaining the market value of the acquired land. The Claimants have brought to my attention the classic judgment of the Apex Court in the case of Chimanlal Hargovinddas vs. Special Land Acquisition Officer, reported in AIR 1988 SC 1652 and drawn my attention particularly to the criteria specified therein under paragraphs 3 and 4 of the said judgment. The said paragraphs 3 and 4 read as under :-

> 3. Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated he award rendered by

the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.

4. The following factors must be etched on the mental screen :

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the

Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S. 4 of the Land Acquisition Act (dates of Notifications under Ss. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the ate line of valuation

(date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land).

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of

the genuine instances have to be identified on the following considerations :

(i) proximity from time angle
(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deducted by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtapostiion.

(12) A balance-sheet of plus and minus factors, may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deducted by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors

1. Smallness of size.
2. Proximity to a road.
3. frontage on a road.
4. nearness to developed area.
5. regular shape.
6. level vis-a-vis land under acquisition.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:-

for table see below)

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract

or block of land of say 10000 eq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

Minus factors

1. largeness of area.
2. situation in the interior at a distance from the road.

3. narrow strip of land with very small frontage compared to depth.
4. lower level requiring the depressed portion to be filled up,
5. remoteness from developed locality.
6. some special disadvantageous factor which would deter a purchaser.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

24. The Apex Court has in a recent judgment in the case of Shaji Kuriakose and another vs. Indian Oil Corpn. Ltd., and others, reported in (2001) 7 SCC 650 has once again summarised in nut-shell how to adopt the comparable sales method of valuation of land while fixing the market value of the acquired land. In paragraph 3 of the said judgment the Apex Court has stated as under :-

"3. It is no doubt true that courts

adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification

under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ext. A-4 is genuine, inasmuch as the sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ext. A-4. The land covered by Ext.

> A-4 is situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlongs from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ext. A-4 is a dry land and whereas the acquired land is a wetland. After acquisition, the acquired land has to be reclaimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Exh. A-4 relates to a small piece of land which does not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than a larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation than what was the market value of the land covered by Ext. A-4. We, therefore, do not find any infirmity in the judgment of the High Court."

One of the criteria which has been reiterated by the Apex Court time and again is that the sale

must be a genuine sale and a willing purchaser is likely to pay the market value should be the yard-stick and criteria which should be adopted by the Court. Keeping in mind this criteria, I am required to consider the rival submissions of the parties.

25. The learned counsel for the Claimants has submitted before me the following submissions:-

(a) Firstly it has been submitted that the subject matter of the reference in each of the land acquisition references is in an independent plot owners and, therefore, the same should be valued separately and cannot be valued as one composite plot of land. I do not find any reason to reject the said argument. It is undoubtedly true that the land of each of the owners has to be separately valued as a separate plot of land even if the acquisition is for a larger plot of land.

(b) The next argument which has been advanced by the learned counsel for the claimants is that what is required to be considered is the locality in which the land under acquisition are situated and it has been contended that the land which is under acquisition was a fast developing area with various facilities in the offing. It was also

true that Nancy Colony was already a developed area in 1992. It has been contended that the land was located proximate to the Western Express Highway and therefore, very ideal location. Now, in so far as the instances are concerned i.e. sale instance no. 3 and 6, the learned counsel for the claimants have vehemently contended that the sale instance no. 3 is a comparable instance. Firstly, it relates to the vacant plot of land. Secondly the sale instance no. 3 is distinct and superior to the other instances which are produced being instance nos. 1, 2 and 6 by either of the parties. It has been contended that both Mr. Mehta and Mr. Rayate who were the valuers produced by rival parties accepted that they are unable to bring in other comparable instances save and except sale instance no. 3 and 6 since there is no other instance available in the office of the Sub-Registrar of Assurances. According to the Claimants, the sale instance no. 3 deserves to be accepted as the most comparable instance for the reasons which are briefly indicated hereinbelow.

(a) The sale instance no. 3 is the proximate instance in time to the relevant date of the acquisition of the land. The land is acquired on 3.8.1989

and the sale instance no. 3 is of the date 4.7.1988 i.e. about one year and one month prior to the relevant date.

(b) Sale instance No. 3 is of a vacant plot of land and the land under acquisition also is free hold vacant plot of land.

(c) According to Mr. Mehta sale instance no. 3 is situated in a locality which is comparable with the locality of the acquired land. Since the acquiring body has failed to establish by evidence that the statement of Mr. Mehta was incorrect and/or that the land was not comparable in so far as the locality is concerned. According to the claimant Mr. Rayate the witness of the acquiring body has never bothered to visit the sale instance no. 3 to ascertain the comparable locality of the said plot of land.

26. As against this, the respondent Acquiring Body has submitted that the sale instance no. 3 is not a comparable plot of land and in support of this contention it has been submitted as under :-

(a) That the land is situate at a distance of more than 2 kilometres. According to Mehta's evidence that the land beyond two kilometres are not comparable with the land under acquisition.

(b) The sale Instance no. 3 is situated only at 1 1/2 kilo mtrs. from the Dahisar Railway Station and proximate to the railway station. However, the land under acquisition is admittedly situated around 4-5 kilo meters away from the Borivali Railway Station.

(c) The sale instance no. 3 is not comparable instance as it is situated in a developed area which is close to the railway station and, therefore, the said instance is not comparable.

(d) It is an admitted position that the sale instance no. 3 is a small plot of land i.e. 207 sq. mtrs. whereas in the present case under acquisition plots are of much larger size and it is a settled fact that the price of smaller size plot fetch a higher price whereas the plot of higher size fetch smaller price and,

therefore,the valued of both the plots is not comparable.

(e) In respect of the land under acquisition there is no amenities available whereas in case of land in sale instance no. 3 there were various amenities available.

According to the respondents, in light of the aforesaid facts, the instance no. 3 is not comparable and, therefore, should not be accepted.

27. According to the respondent it is the sale instance no. 6 which is the most relevant instance which should be accepted firstly because the said land is situated adjacent to the plot of land under acquisition. The said sale instance no. 6 is accepted by the Land Acquisition Officer. According to the learned counsel for the Respondents - the Acquiring Body, that even though they have not proved the said sale instance no. 6 but still the same has come on record by virtue of the production of sale deed by the claimants themselves in cross-examination of Mr. Rayate, therefore, the same stands proved sale instance and should be accepted. It has been further contended that since the land is

adjacent to the land in question, the locality, the distance from railway station, the surrounding thereof all are equal and, therefore, is a more comparable market value of the land than otherwise.

28. On the other hand, the learned counsel for the Claimants has contended that the sale instance no. 6 should not be taken into consideration at all and it should be rejected for basically three following reasons:-

(a) Firstly it has been contended that the sale instance no. 6 is not the true and correct market value of the land and it is not a genuine transaction of the sale. This is because the said land was affected by ULC Act which was brought into force in 1976. According to the learned Counsel for the Claimants, the provisions of the Urban Land Ceiling Act and the Rules and the Guidelines framed thereunder prevents more than a particular percentage of profit even under the Scheme under Section 20 and 21 of the ULC Act. According to the Claimants, once the land is subject to the ULC provisions, it is not free transaction of sale comparable to the

land under acquisition in the present case. According to the learned counsel for the Claimants the said price indicated is a depressed rate and not a true and correct market value of the land and, therefore, the said sale instance should be outrightly rejected.

(b) Secondly, it is contended that the price indicated in the said instance is of land plus building as a composite price and not merely of land and, therefore, it is not possible to arrive at the market value of the land alone prevailing in 1989 and, therefore, the same should be rejected.

(c) Next it is contended that though the conveyance is of 1985 the actual sale took place in 1978 when the agreement for sale was executed and thus, the price mentioned in the conveyance is of 1978 and not of 1985. Thus, the same is not comparable instance of the land under acquisition which is acquired in 1989 almost after the period of 11 years from the sale price mentioned in this instance. It is therefore contended that

merely because the land is situated adjacent to the land under acquisition it should not be blindly accepted as reflecting the true and correct market value by ignoring the aforesaid factors which are, according to the Claimants, so relevant so as to reject the said instance out-right.

(d) It has been contended that the genuine transaction of sale is a paramount consideration because sale value must be such which a willing buyer and willing seller on negotiated basis would have arrived at. It has been contended that the land which has been affected by ULC and where profit margin is affected by virtue of the consideration of the provisions of ULC Act, the same should not be treated as genuine sale instance reflecting the true and correct market value of the land comparable to the free hold land which the owners were possessing at the relevant time and which is acquired under the Land Acquisition Act.

29. The aforesaid contentions are further supported by both the parties by relying upon

large number of authorities. The Claimants have relied upon the judgments commencing from the judgment of the Apex Court in the case of Raghubans Narayan Singh vs. The Uttar Pradesh Governemnt, through Collector of Bijnor, reported in AIR 1967 SC 465, particularly paragraph 5 thereof which is reproduced hereinunder:-

> "(5) The first contention raised on behalf of the appellant is that the High Court's judgment suffered from an infirmity in that it failed to take into account the potential value of the land as a building site in view of the evidence as to the town's recent development. This contention, in our view, has no substance. Market value on the basis of which compensation is payable under S. 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. As observed in South Eastern Rail Co. v.

London County Council, (1915) 2 Ch 252.

"The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor."

Dealing with the doctrine of potential value this Court in N.B. Jeejabhoy v. District Collector, Thana, Civil Appeals Nos. 313 to 315 of 1963, D/- 30-8-1965 (SC) observed as follows:-

"A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value but the objective factor, namely, whether the said potentiality can be turned to account within a reasonably near future ..... The question therefore turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered; whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

It is clear that there is no evidence on record of any building activity of a substantial nature being carried on in

> the neighbourhood of the acquired land at about the time when the notification was issued in 1945. There is equally no evidence of any trend of development of the town in the direction of the acquired land. The only evidence was as to the existence of the school nearby, of the land abutting on the road and of some houses having been built on the opposite side of the road in some of the grove lands. Such evidence however would not constitute an ascertainable trend of development of the town in the direction of the acquired land or of any active building activity nearby. Clearly, therefore, no question of the valuation having to be made on the basis of the potentiality of the land as building site can possibly arise. The contention of Mr. Mishra in this regard therefore must be rejected."

30. Thereafter reliance was placed on a judgment of the Apex Court in the case of Mahabir Prasad Santuka and others vs. Collector, Cuttack and others, reported in AIR 1987 SC 720, particularly paragraph 5 thereof which reads as under :-

> "5. Market value means, the price which a purchaser is willing to pay for the similar land to a willing seller. An offer of sale of land to industrialists on concessional rate with a view to induce them to set up their industries in a particular area does not reflect the prevailing market value of the land. The industrialists who were offered the land at concessional rates are not the willing purchasers. The High Court committed error in proceeding on the assumption that the concessional rate offered by the Govt. to the Industrialists indicated the market value of similar land."

31. Thereafter reliance was place on the judgment of the Supreme Court in the case of Thakurshibhai Devjibhai Vs. Executive Engineer, Gujarat and another, reported in AIR 2001 SC 2424, particularly paragraph 12 thereof which reads as under :-

> "12. As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the

distance between the land under acquisition and Ex. 16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner. It could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex. 16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex.

16 is about two kilometres away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained."

32. The learned counsel for the Claimants has thereafter relied upon the judgment of the Division Bench of this Court in the case of Ranganath Babu Bhote and another vs. State of Maharashtra, reported in (1999) (1) Mh. L.J. 312 and particularly paragraph 12 thereof which is reproduced hereunder :-

"We may emphasise here that in the method of arriving at a valuation of land by reference to price realised by sales of neighbouring lands it is plain that seldom evidence of former sales can be obtained which shall be

> precisely parallel in all its circumstances to the sale of the particular land in question. Differences, small or great, exist in various conditions and what precise allowance should be made for these differences is not a matter which can be reduced to any hard and fast rule. Therefore, we find no difficulty to determine the market price of the acquired land on basis of the previous award. That necessarily means that the market price of the acquired land at the relevant time of publication of notification under section 4 (1) of the Land Acquisition Act would come to Rs. 9,000/- per acre."

33. Thereafter the learned counsel for the Claimants has relied upon the judgment of the Apex Court in the case of Bhagwathula Samanna and others vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, reported in AIR 1992 SC 2298, particularly paragraph 13 thereof which is reproduced hereinunder :-

> "13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to

take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We, are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed."

34. Thereafter the learned counsel for the Claimants has relied upon the judgment of the Apex Court in the case of Collector, Cuttack, vs. Behera and others, reported in AIR 1996 Orissa 215 inter alia contending that as the time passes the judicial notice has to be taken that the prices are going up in respect of the properties.

35. Thereafter he has relied upon the judgment of the Apex Court in the case of Krishna Yachendra Bahadurvaru v. The Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others, reported in AIR 1979 SC 869, particularly part of paragraph 3 thereof, which reads as under :-

> "..... We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. We do not, therefore, think that we would be unjustified in taking the market value of the land acquired under the notifications dated 30th October, 1951 and 28th January, 1954 at Rs. 9/- per sq. yard."

36. Thereafter reliance is placed on the judgment of the Apex Court in the case of Prithvi Raj Taneja (dead) By Lrs. v. The State of Madhya Pradesh and another, reported in AIR 1977 SC 1560, particularly a portion of paragraph 7 thereof which is reproduced as under :-

> "There is an element of guess-work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped. The essential thing is to keep in view the relevant factors prescribed by the Act. If the judgment of the High Court reveals that it has taken into consideration the relevant factors, the assessment of the market value of the acquired land should not be disturbed (see Thakur Kanta Prasad Singh (dead) by L.Rs. vs. State of Bihar, (AIR 1976 SC 2219). After having been taken through the material on the record, we find no infirmity in the judgment of the High Court as might induce us to disturb its finding. The appeal consequently fails and is dismissed but in the circumstances without costs."

37. Thereafter reliance is laced on the

unreported judgment of the Division bench of this Court in the case of Special Land Acquisition Officer vs. M/s. Govindram Brothers Pvt. Ltd. (Land Acquisition Ref. No. 21 of 1983 dated 16.10.2002) in which the Division Bench has held as under :-

> "13. It is well settled that for establishing the market value of the property the land owner is required to prove comparable sale instances of similarly situated lands in the vicinity of the land which is under acquisition and if the land is reserved in the development plan say for play ground, garden or park or recreation area it would mean that no instances will be available in respect of similarly situated land and the landowner would get only nominal compensation or no compensation at all. This question can be viewed from another angle. Section 49(1)(e) of the MRTP Act provides that the owner of a piece of land can invoke section 49 by giving a notice if because of its designation or allocation in any plan, he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell it if it were not so designated or allocated. if the notice, issued as above

is confirmed then the planning authority is required to make an application for acquisition of the concerned land in accordance with section 126. If the contention that while determining the market value the reservation should be taken into account is accepted it would render section 49 completely nugatory.

"14. The submission of the respondents based on section 128 of the MRTP Act is also without any merit. The purpose of section 128 is totally different from section 126, which deals with acquisition for the purpose of reservation. Section 128 deals with a situation where a land is under reservation under the development plan for a public purpose and the State Government is satisfied that the said land is needed for a public purpose different from the pubic purpose for which a reservation is made in the development plan. The effect of such acquisition is that the development plan is deemed to be suitably varied by reason of the said acquisition. In our opinion, it was not necessary to make any such provision in section 126 because the provisions of section 126 clearly mandate payment of market value to the owner whose property is

> reserved in the development plan and consequently acquired under the provisions of section 126. Therefore reliance placed on section 102 is also misconceived."

38. The learned counsel for the Claimants has also relied upon the Compendium of The Urban Land (Ceiling & Regulation) Act, 1976 and Gist of the Guidelines issued by the Government of India, Ministry of Works & Housing. These guidelines are issued under sections 20 and 21 of the Urban Land Ceiling Act, particularly the sale price of the tenement which are constructed under the scheme sanctioned under sections 20 and 21 of the ULC Act. It has been contended by relying upon the said guidelines that there is restriction as to the profit making on the sale of finally built tenement under the ULC Act and, therefore, contended that the sale instance which is sought to be relied upon by the respondent in so far as sale instance no.6 is concerned is without any merit. Particularly the learned counsel has relied upon Schedule I A which is framed under the provisions of rule 11 A of the Urban Land Ceiling Rules, which inter alia provides as under :-

> "4. (1) The dwelling units constructed under the scheme shall be sold by outright sale or on hire-purchase or shall be let out

on rent to the weaker sections of the society.

(2) Where any dwelling unit is sold by outright sale the sale price which such person shall be entitled to get shall not exceed a sum consisting of the actual cost of construction of the dwelling unit and the amount he would be entitled to under section 11 in relation to the land occupied by such dwelling unit and the land appurtenant thereto, if the vacant land is deemed to have been acquired by the State Government under sub-section (3) of section 10 together with a sum calculated at the rate of fifteen per cent on such cost of construction and such amount.

Explanation.- Where the dwelling unit is part of a building, being a group housing, the proportionate shall in relation to the dwelling unit in the amount paid in relation to the land occupied by the building and the land appurtenant thereto, determined on the basis of the ratio of the plinth area of the dwelling unit to the total plinth area of the building, only shall be taken into account in determining the sale price of the dwelling unit under this sub-paragraph.

(3) Where any dwelling unit is sold on hire-purchase such person shall be entitled to get, in addition to the sale price determined in accordance with sub-paragraph (2), interest calculated at the rate of ten per cent per annum on the unpaid portion of the sale price.

(4) Where any dwelling unit is let-out on rent, the rent shall be worked out in such a way that such person would get a return not exceeding then per cent per annum on the sale price of the dwelling unit determined in accordance with sub-paragraph (2).

Explanation.-- For the removal of doubts it is hereby declared that in working out the return on the sale price which such person may get under this sub-paragraph, by way of rent, the fact that the dwelling unit has been vacant or is likely to remain vacant, for any pat of the year shall not be taken into account."

39. The object of the Urban Land Ceiling Act, 1976 also came up for consideration before the Apex Court in the case of M/s. Shantistar Builders, vs. Narayan Khimalal Totame and others, reported in 1990

(1) SCC 520. While considering the object of the Act as well the provisions of exemption under sections 20 and 21 of the ULC Act, the Court has held as under :-

> 4. Under the scheme of the Act, urban agglomeration have been divided into four classes and a ceiling has been prescribed for each classification. The vacant land in excess of the ceiling under the provisions of Section 10 of the Act vests in the State by way of acquisition and the vacant sites thus acquired by the State are intended to be utilised for purposes of housing and Sections 23 and 24 of the Act provide for disposal of vacant land. The Act, therefore, purports to take away the excess land from the holders thereof and utilise the same for purposes of housing and other public purposes. Chapter IV of the Act provides for regulation of transfer as also use of urban property. Section 20 empowers the State to exempt lands from the purview of the Act by providing:
>
> "20. Power to exempt.--(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, --
>
> (a) where any person holds land in excess of the ceiling limit and the State Governemnt is satisfied, either on its own motion or otherwise, that,having regard to the

location of such land, the purpose for which such land is being used or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessity or expedient in the public interest so to do, that governemnt may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter;.."

And Section 21 provides:

"21. Excess vacant land not to be treated as excess in certain cases.--(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square meters) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Governemnt may, by notification in the Official Gazette, specify in this behalf, then, the Competent Authority may, after making such inquiry as it deems fit, declare such land, not to be excess land for the purposes for this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be construed."

5. Both Sections 20 and 21 contain provisions that if government or the competent authority, as the case may be, is satisfied that any of the conditions subject to which exemption was granted is not complied with, it shall be competent for it to withdraw the order under Section 20 or declare such land to be excess land under Section 21 and bring it within the mischief of the statute.

6. In the instant case on January 11, 1978, on the basis of an application made on October 24, 1977, the State Government made an order of exemption, the salient portions of which are extracted for convenience:

"Governemnt of Maharashtra
No.HWS-1077/XXXV
GENERAL ADMINISTRATION DEPARTMENT,
MANTRALAYA, BOMBAY - 400 032.
January 11, 1978
ORDER

Whereas (1) Shri Kumarpal Vadilal Shah (2) Shri Navinchandra Vadilal Shah (3) Smt. Champaben w/o Vadilal Shah (4) Shri Vasantlal Vadilal Shah (5) Shri Babulal Yadilal Shah (6) Smt. Pushpa Mangaldas Shah (7) Smt. Nirmala Hiralal Shah, (8) Smt. Shakuntala Tansukhlal Parekh and (9) Smt. Madhubala Vadilal Shah (persons at Sr. Nos. 2 to 9 by their constituted attorney Shri Kumarpal Vadilal Shah), 26, Suneel Shopping Centre, Opp. Navrang Talkies, Andheri (West), Bombay -- 400 058, hold vacant lands in exces of the ceiling limit in the Greater Bombay Urban Agglomeration, details of which are given in the Schedule 'A' herein:

And whereas the said persons have applied for exemption under section 20 of the Urban Land (C & R) Act, 1976 (33 of 1976).

And whereas, the said persons have mentioned in their application, that their scheme of construction of houses for Weaker Section will be executed by them, through Messrs Star Builders, 302, Sharda Chambers, 15 New Marine Lines, Bombay - 20.

Now therefore, in exercise of the powers conferred by sub-section (1) of Section 20 of the said Act, after having recorded in writing the reasons for making this order, the Governemnt of Maharashtra hereby exempts the said vacant lands, from the provisions of Chapter III of the said Act, subject to the following conditions viz.:

(1) The lands exempted under this exemption

order shall be used by the said persons for the purpose of housing for Weaker Section comprising 17,000 (seventeen thousand) tenements consisting of 3000 (three thousand) tenements of plinth area, not exceeding 20 sq. mts. 10,000 (ten thousand) tenements of plinth area, not exceeding 30 sq. mts., 3000 (three thousand) tenements of plinth area, not exceeding 44 sq. mts. and 1000 (one thousand) tenements of plinth area, not exceeding 57 sq. mts. Any change made in the use of the land shall amount to a breach of this condition.

(2) The said persons shall make full utilization of the land so exempted for the purpose aforesaid, by constructing on the land the 17,000 tenements as specified in the condition No. 2 above. The said persons shall commence construction of the tenements within a period of one year from the date of this exemption order and shall complete the construction work within a period of five years from that date, failing which the exemption shall stand withdrawn. If only a part of land is utilized and a part remains vacant at the end of period of five years, exemption shall be deemed to have been withdrawn.

(3) The final selling price, all inclusive of each of the dwelling units shall not exceed Rs. 50 (Rupees fifty only) per sq.ft. of plinth area. Each tenement is to be provided with all the amenities as mentioned in the Schedule 'B' attached to this order and as mentioned in the State Governemnt Scheme, announced on October 2, 1977 for construction of houses for Weaker Sections of Society on surplus vacant land by the land holder. The details of construction shall not be inferior to those already mentioned in the application. The actual construction and the quality of construction, will be subject to the building regulations of the local authorities, and subject to such other conditions as may be imposed, by the Collector of Thane, Town Planning Authority and the BMRDA and other statutory regulations.

(4) .....
(5) .....
(6) .....

(7) The said persons shall not transfer the

exempted lands (with or without buildings thereon) or any part thereof to any other persons, except for the purpose of mortgage in favour of any financial institution, specified in sub-section (1) of Section 19 of the said Act, for raising finances for the purposes of construction or any one of the tenements mentioned above. Breach of this condition shall mean that the exemption granted under this order stands withdrawn.

(8) .....
(9) .....

(10) The construction work under the scheme will be further subject to all other conditions incorporated in the Scheme of Weaker Section Housing announced by the State Governemnt on October 2, 1977 and subject to such other conditions as may be imposed by the local authorities, Collector of Thane, Town Planning Authorities and the BMRDA.

(11) If at any time, the State Governemnt is satisfied that there is a breach of any of the conditions mentioned in this order, it shall be competent for the State Government by order to withdraw the exemption from the date specified in the order;"

7. Respondents contended before the High Court that the builder had violated the conditions imposed in the order of exemption; that need of the weaker sections of society was not being attended to and a big racket had been formed by real estate speculators to eliminate the economically weaker sections and persons genuinely in need of housing accommodation and to make unauthorised and illegal profit out of such transactions. They had also challenged the sanction of escalation following the demand of the builder and alleged that the legislative

> purpose of according exemption and even as contemplated in the original order of exemption have been departed from in allowing escalation beyond reasonable limits. It had been further alleged that applications from genuine persons belonging to the economically weaker sections have ben overlooked and persons not entitled to the benefit have been registered by the builders and even allotted apartments and the builders are in collusion with racketeers."

From the aforesaid analysis of the provisions of the Urban Land Ceiling Act, it is clear that the land ultimately put to use under the scheme formulated pursuant to sections 20 and 21 of the ULC Act does not indicate and/or reflect true and correct market value of the tenement which are constructed by the builder. It is clear from the aforesaid judgment that the price prescribed in a sale deed in respect of the land which is subjected to the Urban Land Ceiling Act and/or a Scheme for exemption under sections 20 and 21 of the ULC Act is therefore cannot be taken into consideration to determine the market price for enhancement of compensation under section 18 of the Land Acquisition Act.

40. It is not possible to accept the contention on the part of the acquiring body that sale instance

no. 6 reflects the true market value of the land and the same therefore should be taken into consideration.

41. As against this, the learned counsel for the respondent has relied upon the judgment of the Apex Court in the case of The Special Land Acquisition Officer and another, etc., etc., v. Sri Siddappa Omanna Tumari and others, etc. reported in AIR 1995 SC 840 particularly paragraphs 14 and 15 of the said judgment which reads thus :-

> "14. Therefore, where a sale deed or an agreement to sell relating to a small extent of land is produced by the claimant, in the enquiry held for determination of compensation payable for his large extent of land, the Court is not always bound to determine the market price of such large extent of acquired land on the basis of the price fetched or to be fetched by small extent of land covered by such sale deed or agreement to sell.
>
> 15. It has become a matter of common occurrence with the claimants who seek enhanced compensation for their acquired land from court to produce the reports of valuation of their lands in court purported

to have been prepared by the experts. No doubt, courts can act on such expert evidence in determining the market value of the acquired lands, but the court having regard to the fact that experts will have prepared the valuation reports in the court and will depose in support of such reports, at the instance of the claimants, must with care and caution examine such reports and evidence given in support thereof. Whenever valuation report made by an expert is produced in court, the opinion on the value of the acquired land given by such expert expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. Besides, if the method of valuation of acquired land adopted by the expert in his reports is found to be not in consonance with the recognised methods of valuation of similar lands, then also, the opinion expressed in his report and his evidence can be of no real assistance to the court in determining the market value of the acquired land. Since the exercise which will have been done by the expert in arriving at the

> market value of the land in his report on the basis of factual data bearing on such valuation, will be similar to that to be undertaken by the court. In determining the market value of the acquired land, it can no doubt receive assistance from such report, if it is rightly done and the data on which the report is based is placed before the court and its authenticity is established."

42. On giving my anxious thoughts to the aforesaid views and the law declared by Apex Court, I am of the opinion that the sale instance no. 3 is the appropriate instance to be accepted as comparable market value of the land under acquisition. It is undoubtedly true that the sale instance no. 6 is situated adjacent to the land under acquisition. It is also undoubtedly true that it would have been an ideal instance for the purpose of comparable market value of the land under acquisition. It is also true that this sale instance has been accepted by the Land Acquisition Officer for determining the market value of the land under the Award for the purpose of awarding compensation under Section 11 of the Land Acquisition Act. However, I am unable to persuade myself to accept the said sale instance no. 6 as the comparable market value of the land. It is an admitted position that the said land was affected by

the ULC Act. The ULC Act came into operation in 1976. The first agreement for ale is of the year 1978 which is two years after the ULC Act came into force. It is also an admitted position that under the provisions of the ULC Act the landholding above certain ceilings could be liable to be acquired by the Government and it vests in the Government under Section 10 for a mere sum of compensation of Rs. 2 lacs. To avoid the rigours of the ULC Act various agreements are entered into to indicate the sale of the portion of the land. However, though an agreement is entered into in 1978 the land is developed much thereafter and conveyance is executed in 1985 in respect of the said land in favour of the co-operative housing society. The construction of the land was permitted by virtue of the sanction of the scheme under the provisions of sections 20 and 21 of the ULC Act which provides for construction of houses for weaker section of the society. The guidelines which are framed in terms of the provisions of the said Act and rules indicate that when the land is constructed under the scheme formulated under sections 20 and 21 of the ULC Act, the builder is not allowed to profit from the sale of the said land and/or tenaments constructed thereon and the restrictions are placed on the sale price of the said land along with building constructed thereon or tenaments in such a building. The sale price has to be arrived at by virtue of the

calculation of the figures which are indicated as per the formula prescribed under the guidelines. In view thereof, obviously the market value of the land would be affected as no builder is going to purchase the land at the regular genuine market value of the same when his profit is likely to be seriously affected by virtue of the formula prescribed for the sale of the said land. Sale instance no. 6 based on ULC formula is not comparable market value in so far as the land under acquisition is concerned. The land under acquisition is not affected by the ULC Act. Thus, the price of the land in sale instance no. 6 and the price of the land under acquisition has to be different. However, the respondent while accepting the same has purportedly contended that the Land Acquisition Officer has taken into consideration the composite price of the land and building keeping in mind that the price is affected by ULC Act and, therefore, this Court also should accept the said price as composite price of the land and building for the purpose of determining the market value of the land under acquisition. Undoubtedly it is true that I am entitled to have certain amount of guess work while determining the market value of the land under acquisition. But I am afraid that I am not permitted to such a wild guess so as to determine the market value of the land under acquisition by relying upon the composite market value of sale instance no. 6 by taking the

value of land and building both together. I am afraid that such a wild guess is not permissible in exercise of my jurisdiction under Section 18 of the Land Acquisition Act. I, thus, do not accept the contentions of the acquiring body that I should determine the market value of the land under acquisition by taking into consideration sale instance no. 6. I reject the said sale instance as the comparable market value of the land under acquisition.

43. My decision not to accept the sale instance no. 6 as comparable to the land in acquisition is further fortified by two additional factors, namely, the sale instance no. 6 is indicative of the market value of the land in 1978 because the agreement for sale was executed in 1978. Thus, it is prior to 11 years to the date on which the land under acquisition was notified for acquisition. Secondly, the same is composite market value of the land. The learned counsel for the respondent has sought to urge that the market value of the land is mentioned in the conveyance when reference is given in the recital of the sale deed about the execution of agreement for sale in 1978. In absence of proof of market value of land being proved by producing agreement for sale of 1978 it it not possible for me to determine the market value of land by reading a recital in conveyance as if the agreement for sale

of 1978 is a proved document on record. I, therefore, do not accept the contention of the learned counsel for the respondent that the land is comparable land with the land under acquisition. I, therefore, reject the sale instance no. 6 as the comparable instance to the land under acquisition for the aforesaid additional grounds also.

44. Before I compute the market value by various deductions and additions which I am required to do for the purpose of ascertainment of the true market value of the land under acquisition, I must first deal with the contention of the learned counsel for the respondent - acquiring body that why sale instance no. 3 should not be accepted as the market value of the land. According to the learned counsel for the respondent, the said sale instance should not be accepted for three reasons. Firstly size of the plot is smaller. I do not see much difference between the size of most of the plots under acquisition and the size of the plot in sale instance no. 3. Similarly, While considering the size of the plot under acquisition and the comparable sale instance what is required to be considered is what should be an ideal size of the plot for carrying out construction thereon. In the present case it is common knowledge that in Mumbai constructions are carried out for sale of flats in a building which ultimately form a co-operative

housing societies. In my opinion, for such construction the ideal size of the plot should be taken into consideration shall be about 800 to 1000 sq. mts. Thus, if the plot under a comparable sale instance is much smaller size then an ideal size it wold fetch a much lesser price and therefore the said factor has to be taken into account. On the other hand, if the plot is very large which is a comparable plot of land then similar deductions should be taken into consideration to arrive at market value of the land. In the present case, most of the plots under acquisition are around 800 sq. meters. whereas the plot of land of instance no. 6 is around 207 sq. mtrs. In respect of some other plots of land under acquisition they are of a much larger size. According to me while comparing the size of the plot of land, it is necessary to compare whether it is smaller plot of reasonable size or of a larger plot of land with the comparable sale instance. Thus, on this ground, I am not inclined to reject sale instance no. 3 on the ground of the size of the plot. In my view there can be no outright rejection of the sale instance merely based on size of the plot. The second contention raised is that the sale instance no. 3 is located close to the railway station at Dahisar whereas this plot is far away from the railway station which is close to the Borivali Railway Station. According to the learned counsel for the respondent because of the

same the land is not comparable land and, therefore, the sale instance no. 3 be rejected. This argument also I am not inclined to accept because the sale instance no. 3 though situated at Dahisar Railway Station but the area in Borivali is a more developed area than Dahisar Railway Station. Mr. Mehta in his evidence has deposed to the aforesaid fact. There is no serious cross-examination on this aspect of the matter. In view thereof, I do not accept the contention of the respondent acquiring body.

45. The next ground raised is that the land was the developed land whereas the land under acquisition was undeveloped land i.e. filling was required to be done. This is a factor which is required to be taken into consideration while considering for deduction for the market value of sale instance no. 3. But this cannot the ground for out right rejection of sale instance no. 3.

46. The last ground raised is distance of land from the land under acquisition. In my opinion, the distance between the acquired land and the land under acquisition cannot be treated as a long distance by any stretch of imagination particularly when there is no other sale instances available for comparison in the nearby vicinity. The distance between the acquired land ultimately has to be determined on the basis of subjective satisfaction

while considering the area whether it is more developed or less developed. In the light of the aforesaid facts I do not accept the argument advanced by the learned counsel for the respondent acquiring body for rejection of sale instance no. 3 as an instance. I, therefore, accept the sale instance no. 3 as the comparable market value of the land and proceed to determine the market value of the land under acquisition in comparison with the said sale instance no. 3 by providing for necessary addition and deductions as has been held by the Apex Court in various judgments some of which are enumerated hereinabove.

47. In view of the fact that I have accepted the sale instance no. 3 as the correct market value of the land, I am of the opinion that the market value of the acquired land should be counted as Rs. 1445.78 per sq. mtr. i.e. consideration disclosed in the registered conveyance dated 4.7.1988 of Rs. 3 lacs divided by the area of the plot of 207.50 sq. mtrs. In the present case, the land is acquired on 3.8.1989 which is approximately one year after the date of the registered conveyance in respect of the sale instance no. 3 applying the rate of rise as 5% of the market value.

48. In so far as the size is concerned, the ideal size for carrying out construction of a

building is around 800 to 900 sq. meters and thus, accordingly, I am required to give adjustment of addition or deduction in respect of the market value of the said land. In the present case, the sale instance no. 3, the size is 207.50 sq. mts. and, therefore, I am of the opinion that in respect of the plot of lands which are subject matter of acquisition where size is of almost equivalent size, no addition is necessary or no deduction is necessary. However, in respect of some of the plots where the size of plot differs, necessary deductions are required to be given. In all there are eight plots of land under acquisition covered by five Land Acquisition References.

49. In so far Land Reference No. 4 of 1994 is concerned, it takes into consideration two plots of land, i.e. Plot No. 2352 (Part), and Plot No. 2349. In so far as the Plot No. 2352 (Part) is concerned, the area of the said plot under acquisition is 330.14 sq. mts. and so far as Plot No. 2349 is concerned, the area of land under acquisition is 1370.40 sq. mts. Taking into consideration the yard-stick of 800 to 900 sq. meters as an ideal plot of land, I grant 5% deduction in so far as Plot No.2352 is concerned.

50. In so far L.A. Reference No. 4 of 1998 is concerned, the Plot No. is 2353 (Part) and the area

of the plot under acquisition is 878.70 sq. mts. and thus I give allowance of additional 5% for an ideal size of the plot. In so far as L.A. Reference No. 4 of 1998 is concerned, the plot No. is 2300 (Part) and the area acquired is 1,765.50 sq. mtrs. and so I give again a deduction of 10% in so far as the said area of the land is concerned.

51. In so far as L.A. Reference No. 7 of 1994 is concerned, the plot No. is 2350 (part) and the area acquired is 740.64 sq. mtrs. and plot No. 2350 (Part) and area acquired is 1,025.48 sq. mtrs. In both the cases, I give 5% allowance for the area of the plot of land.

52. In so far as L.A. Reference No. 2 of 1998 is concerned, the plot no. is 2348 and the land acquired is 675.70 sq. mtrs. Once again the same is close to ideal size of land and thus, I give 5% allowance as addition to the market value of the land.

53. In so far as L.A. Reference No. 3 of 1998 is concerned, the plot no. is 2347 (part) and the area acquired is 2249.90 sq. mtrs. and thus,the said plot of land is too much in size and, therefore, requires deduction of almost 10% of the market value of the said land.

54. In so far as the shape of the plot is concerned, I give an identical allowance of addition of 10% because the land under acquisition is of proper shape whereas in sale instance no. 3 is not of a perfect shape of the land. Thus, I grant, allowance of 10% addition in respect of the plots of land under acquisition.

55. In so far as frontage on road is concerned, in respect of frontage on road there is argument advanced by the respondent acquiring body relying upon the evidence of the persons who were present at the time of taking possession of the land. They have contended that the said land did not have a motorable road and motorable tar road. According to me, what is required to be considered is whether the land has an access and/or provision is made for access of the said land. It is an admitted position that the land under acquisition did not have access. Some of the plots have access through D.P. Road which was produced under the Town Planning Act. Even the Land Acquisition Officer has taken into consideration the said aspect and in respect of certain plots which had access he has given Rs. 375 and which did not have access he has given Rs. 125/-. In my view, the land which had an access requires no addition or deduction as the land under instance no. 6 also had an access to the said plot of land. In so far as the land which has no access

as classified by the SLAO himself in the Award and in respect of which an award is given at Rs. 125, I am of the opinion that the flat 30% deduction should be given from the market value of the sale instance no. 3 as in my view the access is the most relevant factor for the market value of the said land. Thus, those plots which are classified by the SLAO as having no access there should be deduction of 40%.

Plot no.	Deduction
2352 (Part)	Nil
2353 (Part)	Nil
2350 (Part)	40%
2450 (Part)	40%
2349 (Part)	40%
2348 (Part)	40%
2347 (Part)	40%
2300 (Part)	40%

56. Thereafter the learned counsel for the respondent contended that the frontage on road requires a further addition and/or deduction. Mr. Mehta has given in respect of plot no. 2 10% of the addition i.e. bearing CTS NO. 2353 of Land Acquisition Reference No. 4 of 1998. In my view, there is no such addition is needed for the frontage on the road. However, in respect of other land I agree with Mr. Mehta and give 5% deduction for not

having any frontage of land in respect of ascertainment of the market value of the land. In so far as the availability of further amenities and development or underemployment of the land is concerned, it requires no addition or deduction because according to me the locality in Borivali is more developed than the area of the land which is located at Dahisar Railway Station being instance no. 3. It has come in the evidence and not denied that Borivali is much more developed and command more value of the land thank the land situated in Dahisar. However, the said land being at a distance from the Borivali Railway Station, I am of the opinion that the addition which is required for the purpose of developed area of Borivali and deduction required for the purpose of distance from the railway station is required to be neutralised and no addition or deduction is required in so far as the amenities and development is concerned. According to the learned counsel for the respondents, acquiring body, the proximity to the railway station commands deduction of 10% from instance no. 3 because the land under instance no. 3 is closely located to the Dahisar Railway station whereas the land under acquisition is away about 4 kilometres from the Borivali Railway station. On the other hand, the learned counsel for the Claimants has contended that the Borivali Railway Station is a junction and very well connected and people prefer

to travel from Dahisar to Borivali. This instance is also given by Mr. Mehta. In view thereof, I am of the opinion that no addition or deduction is necessary for the aforesaid purpose.

57. This leads to another major development pursuant to the filling up of the land. It is on record the amount of filling which is required to be carried out as the plan indicated i.e. each sub plot which had an existing ground level and formation level. Mr. C.M. Korde the learned counsel for the Claimants has prepared a chart and given details in respect of each of the plots and and has worked out a difference of 04 per sq. metr. As against that, the Claimants have proved by documentary evidence the amount which they have spent for the purpose of filling up of the land. It is an admitted position that the said filling up is done not for the purpose of construction of the building but for using the same for bus depot. It is thus clear that the said filling up was done by the acquiring body for the purpose of user of the land for the S.T. Depot. I therefore cannot take into consideration full deduction of the amount spent by the MSRTC because the land could be developed even without spending the total amount as done by MSRTC for the S.T. Depot. The development of the land for S.T. Depot is for the requirement of the MSRTC. However, it is not possible to deduct

an exact amount. I give the deduction of 50% of the amount spent by the acquiring body for carrying out said work as deduction to the market value of land as determined by me.

58. This leads me to the next argument of hutments. The learned counsel for the Claimants has fairly conceded that there were hutments on the land because the SLAO himself has set out in his award even though no evidence has been led by MSRTC. The learned counsel has candidly submitted that I must give allowance to the said hutments existing on the said portion of the land. According to the award there were 7 hutments on the said land. The said 7 hutments were situated on CTS 675 sq. mtrs. In respect of the other hutments which are mentioned in the award of the SLAO which were on the land which is not the subject matter of the references though they were on the acquired land. So far as I am concerned, the only concerned plot is 2348 where seven hutments were located. I give deduction and negative allowance of 15% in respect of the said hutments located thereon by taking into consideration the requirement of shifting the said hutments from the said acquired land.

59. Thus, on the aforesaid basis, the valuation of each of the plots works out as under :-

PLOT NO.1:C.T.S. No.2352(PT.):L.A.REF.NO.4/1994.
AREA : 330.14 SQ.MTS.
Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	Nil	Nil
3. Shape	10%	+Rs.144.58 per sq.mtr.
4. Frontage	5% deduction	-Rs.72.29 per sq.mtr.
5. Development	Nil	Nil
6. Filling	50% of the amount spent by MSRTC for filling up of the land	- Rs.51.20 per sq.mtr.
7. Acess	Nil	Nil
8. Final of market valuation of the land.		Rs.1539.16 per sq.mtr.

PLOT NO.2:C.T.S. No.2353(PT.):L.A.REF.NO.4/1998.
AREA : 878.70 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	5% addition	+Rs.72.29 per sq. mtr.
3. Shape	10%	+Rs.144.58 per sq.mtr.
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	-Rs.51.20 per sq.mtr.
7. Access	Nil	-
8. Final of market valuation of the land.		Rs.1683.74 per sq.mtr.

PLOT NO.3:C.T.S. No.2350(PT.):L.A.REF.NO.7/1994.
AREA : 740/64 SQ. MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	5% addition	+Rs.72.29 per sq.mtr.
3. Shape	10%	+Rs.144.57 per sq.mtr.
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	-Rs.51.20 per sq.mtr.
7. Access	40% deduction	-Rs.578.32 per sq.mtr.
8. Final of market valuation of the land.		Rs.1105.42 per sq.mtr.

PLOT NO.4:C.T.S. No.2350(PT.):L.A.REF.NO.7/1994.
AREA : 1,025.48 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	5% addition	+Rs.72.29 per sq.mtr.
3. Shape	10%	+Rs.144.57 per sq.mtr.
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	- Rs.51.20 per sq.mtr.
7. Access	40% deduction.	-Rs.578.31 per sq.mtr.
8. Final of market valuation of the land.		Rs.1105.42 per sq.mtr.

PLOT NO.5:C.T.S. No.2349(PT.):L.A.REF.NO.4/1994.
AREA : 1370.40 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	5% deduction.	+Rs.72.29 per sq.mtr.
3. Shape	10%	+Rs.144.57 per sq.mtr
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	-Rs.51.20 per sq.mtr.
7. Access	40% deduction.	- Rs.578.31 per sq.mtr.
8. Final of market valuation of the land.		Rs.960.84 per sq.mtr.

PLOT NO.6:C.T.S. No.2348(PT.):L.A.REF.NO.2/1998.
AREA : 675.70 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr
2. Size	5% addition	Rs.72.29 per sq.mtr.
3. Shape	10%	+Rs.144.58 per sq.mtr
4. Frontage	Nil	Nil
5. Development	Nil	Nil
6. Filling	50% of the amount spent by MSRTC for filling up of the land	- Rs.51.20 per sq.mtr.
7. Access	40% deduction.	-Rs.578.31 per sq.mtr.
8. Hutments	15% deduction	- Rs.216.87 per sq.mtr.
9. Final of market valuation of the land.		Rs. 888.56 per sq. mtr.

PLOT NO.7:C.T.S. No.2347(PT.):L.A.REF.NO.3/1998.
AREA : 2249.90 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	10% deduction	- Rs.144.57 per sq.mtr.
3. Shape	10%	+Rs.144.57 per sq.mtr.
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	- Rs.51.20 per sq.mtr.
7. Access	40% deduction.	-Rs.578.31 per sq.mtr.
8. Final of market valuation of the land.		Rs.888.56 per sq.mtr.

PLOT NO.8:C.T.S. No.2300(PT.):L.A.REF.NO.4/1998.
AREA : 1,765.50 SQ.MTS.

Market value determined as per sale instance no. 3 is Rs. 1445.78.

Features	Allowance	Amount
1. Increase in the price for one year.	5%	+Rs.72.29 per sq.mtr.
2. Size	10% deduction	-Rs.144.57 per sq.mtr.
3. Shape	10%	+Rs.144.57 per sq.mtr.
4. Frontage	Nil	-
5. Development	Nil	-
6. Filling	50% of the amount spent by MSRTC for filling up of the land	- Rs.51.20 per sq.mtr.
7. Access	40% deduction	- Rs.578.31 per sq.mtr.
8. Final of market valuation of the land.		Rs.888.56 per sq.mtr.

60. Thus, I award the enhancement of the compensation over and above the compensation granted by the SLAO along with Solatium under Section 23 (A) and interest under Section 28 in respect of each of the reference as under :-

A) MARKET VALUE (RATE X AREA)

i) PLOT NO.1 (C.T.S.No. 2352 (PT)

330.14 SQ.MTS. X 1539.16 PER SQ.MT. RS.5,08,134.28

ii) PLOT NO.5(C.T.S. NO.2349(PT).

1370.40 SQ.MTS. X 960.85 PER SQ.MT. RS.13,16,748.84

RS.18,24,887.12

B) SOLATIUM (30% OF M.V.) RS.5,57,466.13

= M.V. X 0.30

C) COMPONENT U/S.23 (1A) @ 12% P.A.

= M.V. X (278 DAYS/365 DAYS) X 0.12 RS.1,66,789.68

D) TOTAL COMPENSATION

(D= A + B + C) RS.25,39,142.93

E) COMPENSATION AWARDED BY S.L.O. RS.8,87,297.51

F) ADDITIONAL COMPENSATION

PAYABLE (F + D - E) RS.16,51,845.42

G) INTEREST ON (F) ABOVE

@ 9% P.A. FROM 30-06-90

TILL 29-06-91 (FOR FIRST YR.) RS. 1,48,666.08

H) INTEREST ON (F) ABOVE

@ 15% P.A. FROM 30-06-91

TILL 28-02-2005 i.e. FOR 13 YRS

& 243 DAYS. RS.33,86,056.83

I) TOTAL COMPENSATION

PAYABLE AS ON 28-02-2005

(I = F + G + H) RS.51,86,568.33

A) MARKET VALUE (RATE X AREA)

i) PLOT NO.3 (C.T.S.No. 2350 (PT)

740.64 SQ.MTS. X 1105.42 PER SQ.MT. RS.8,18,718.26

ii) PLOT NO.4(C.T.S. NO.2350(PT).

1025.48 SQ.MTS.X 1105.42 PER SQ.MT. RS.11,33,586.10

RS.19,52,304.36

B) SOLATIUM (30% OF M.V.) RS.5,85,691.31

= M.V. X 0.30

C) COMPONENT U/S.23 (1A) @ 12% P.A.

= M.V. X (278 DAYS/365 DAYS) X 0.12 RS.1,78,435.27

D) TOTAL COMPENSATION

(D= A + B + C) RS.27,16,430.94

E) COMPENSATION AWARDED BY S.L.O. RS.9,21,515.44

F) ADDITIONAL COMPENSATION

PAYABLE (F + D - E) RS.17,94,915.50

G) INTEREST ON (F) ABOVE

@ 9% P.A. FROM 30-06-90

TILL 29-06-91 (FOR FIRST YR.) RS. 1,61,542.39

H) INTEREST ON (F) ABOVE

@ 15% P.A. FROM 30-06-91	
TILL 28-02-2005 i.e. FOR 13 YRS	
& 243 DAYS.	RS.36,79,330.89
I) TOTAL COMPENSATION	
PAYABLE AS ON 28-02-2005	
(I = F + G + H)	RS.56,35,788.78

A) MARKET VALUE (RATE X AREA)	
PLOT NO.6 (C.T.S.No. 2348 (PT)	
675.70 SQ.MTS. X 888.56 PER SQ.MT.	RS.6,00,399.99
B) SOLATIUM (30% OF M.V.)	RS.1,80,120.00
= M.V. X 0.30	
C) COMPONENT U/S.23 (1A) @ 12% P.A.	
= M.V. X (278 DAYS/365 DAYS) X 0.12	RS. 54,874.91
D) TOTAL COMPENSATION	
(D= A + B + C)	RS. 8,35,394.90
E) COMPENSATION AWARDED BY S.L.O.	RS. 3,52,562.67
F) ADDITIONAL COMPENSATION	
PAYABLE (F + D - E)	RS. 4,82,832.23
G) INTEREST ON (F) ABOVE	

@ 9% P.A. FROM 30-06-90

TILL 29-06-91 (FOR FIRST YR.) RS. 43,454.90

H) INTEREST ON (F) ABOVE

@ 15% P.A. FROM 30-06-91

TILL 28-02-2005 i.e. FOR 13 YRS

& 243 DAYS. RS. 9,89,739.93

I) TOTAL COMPENSATION

PAYABLE AS ON 28-02-2005

(I = F + G + H) RS.15,16,027.06

A) MARKET VALUE (RATE X AREA)

PLOT NO.7 (C.T.S.No. 2347 (PT)

2249.90 SQ.MTS. X 886.56 PER SQ.MT. RS.19,99,171.14

B) SOLATIUM (30% OF M.V.) RS.5,99,751.34

= M.V. X 0.30

C) COMPONENT U/S.23 (1A) @ 12% P.A.

= M.V. X (278 DAYS/365 DAYS) X 0.12 RS.1,82,718.76

D) TOTAL COMPENSATION

(D= A + B + C) RS.27,81,641.24

E) COMPENSATION AWARDED BY S.L.O. RS.11,73,939.20

F) ADDITIONAL COMPENSATION
PAYABLE (F + D - E) RS.16,07,702.04

G) INTEREST ON (F) ABOVE
@ 9% P.A. FROM 30-06-90
TILL 29-06-91 (FOR FIRST YR.) RS. 1,44,693.18

H) INTEREST ON (F) ABOVE
@ 15% P.A. FROM 30-06-91
TILL 28-02-2005 i.e. FOR 13 YRS
& 243 DAYS. RS.32,95,568.94

I) TOTAL COMPENSATION
PAYABLE AS ON 28-02-2005
(I = F + G + H) RS.50,47,964.16

A) MARKET VALUE (RATE X AREA)
i) PLOT NO.2 (C.T.S.No. 2353 (PT)
878.70 SQ.MTS. X 1683.74 PER SQ.MT. RS.14,79,502.34
ii) PLOT NO.8(C.T.S. NO.2300(PT).
1765.50 SQ.MTS. X 886.56 PER SQ.MT. RS.15,68,752.68

RS.30,48,255.02

B) SOLATIUM (30% OF M.V.) RS.9,14,476.56
= M.V. X 0.30

C) COMPONENT U/S.23 (1A) @ 12% P.A.

= M.V. X (278 DAYS/365 DAYS) X 0.12 RS.2,78,602.15

D) TOTAL COMPENSATION

(D= A + B + C) RS.42,41,333.73

E) COMPENSATION AWARDED BY S.L.O.

(PLOT NO. 2 RS.4,58,482.79 +

PLOT NO. 8 RS.3,07,063.98 RS.7,65,546.77

F) ADDITIONAL COMPENSATION

PAYABLE (F + D - E) RS.34,75,786.96

G) INTEREST ON (F) ABOVE

@ 9% P.A. FROM 30-06-90

TILL 29-06-91 (FOR FIRST YR.) RS. 3,12,820.82

H) INTEREST ON (F) ABOVE

@ 15% P.A. FROM 30-06-91

TILL 28-02-2005 i.e. FOR 13 YRS

& 243 DAYS. RS.71,24,887.82

I) TOTAL COMPENSATION

PAYABLE AS ON 28-02-2005

(I = F + G + H) RS.1,09,19,494.91

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60. The Government shall deposit the aforesaid amount with further interest at the rate of 15% per annum under Section 28 of the Land Acquisition Act within a period of six months from today. The Claimants will be entitled to withdraw the said amount from the Office of the Prothonotary and Senior Master,High Court, Bombay.